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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,696	12/16/2001	Michael Brock	MULLER-27	6217
	7590	03/30/2004	EXAMINER	
C James Bushman Browning Bushman 5718 Westheimer Suite 1800 Houston, TX 77057-5771			WANG, SHENGJUN	
			ART UNIT	PAPER NUMBER
			1617	
DATE MAILED: 03/30/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/890,696

Applicant(s)

BROCK ET AL.

Examiner

Shengjun Wang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Receipt of applicants' amendments and remarks submitted December 29, 2003 is acknowledged.

Claim Objections

1. Claim 19 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 19 does not further limit claim 18 with respect to R4.

Claim Rejections 35 U.S.C. 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 11-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lerg et al. (US 6,132,738, IDS) in view of Balzer (US 5,605,651) and Bergmann et al. (US 5,077,040) for reasons set forth in the prior office action. With respect to the newly added claims 18 and 19 which recite hydroxylalkyl as R4 (claim 19), and C3-hydroxyalkyl in particular (claim 18), note Lerg disclose ammonium salt wherein Rs may be hydroxyl alkyl radical having from 1-24 carbon (column 2, lines 55-67), and Balzer particularly teaches the ammonium salt of fatty alcohol sulfate with C2-C3 alkanolammonium (column 3, lines 54-60).

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4. Claims 11-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hermann et al. (US 4,371,584, IDS) in view of Balzer (US 5,605,651) and Bergmann et al. (US 5,077,040) in the prior office action. With respect to the newly added claims 18 and 19 which recite hydroxylalkyl as R4 (claim 19), and C3-hydroxyalkyl in particular (claim 18), note Hermann disclose the amine moiety of the ammonium salt may be isopropanolamine, mixed alkanolalkylamines, and Balzer particularly teaches the ammonium salt of fatty alcohol sulfate with C2-C3 alkanolammonium.

Response to the Arguments

Applicants' amendments and remarks submitted December 29, 2003 have been fully considered, but are not persuasive.

5. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Note, taking the cited references as a whole, the claimed subject matter would have been obvious to one of ordinary skill in the art. Particularly, prior art discloses that the fatty alcohol sulfate alkanol ammonium salts are known to be useful as emulsifier in cosmetic composition, it would have been obvious to use such salts in cosmetic composition.

Applicants argues that Lerg reference and Hermann reference specifically limit the amount of the water in the composition, therefore it would have not been obvious for the claimed invention which has higher water content (3% and 15% of the cited references vs 20-95% herein). The arguments are not persuasive. Particularly, applicants fails to consider the cited

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references as a whole. Note question under 35 U.S.C. 103 is not merely what reference expressly teach, but what they would have suggested to one of ordinary skill in the art at the time the invention was made; all disclosures of prior art, including unpreferred embodiments, must be considered. In re Lamberti and Konort (CCPA), 192 USPQ 278. Consider the totality of the teaching by the cited references, the claimed subject matter would have been obvious to one of ordinary skill in the art. Specifically, both Lerg and Hermann references teach cosmetic composition comprises large amount of oil (30-45% and 20-60% in cited references vs 0.1-20% herein). One of ordinary skill in the art would have understood that the limitation of water content was applied because of this specific condition. It would have been obvious to one of ordinary skill in the art, to employ more water when oil content was low. For example, forming emulsion composition with the help of other surfactant (emulsifier).

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shengjun Wang, Ph.D. whose telephone number is (571)272-0632. The examiner can normally be reached on Monday-Friday from 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, can be reached on (571)272-0629. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1600.

SHENGJUN WANG
PRIMARY EXAMINER

Shengjun Wang

March 29, 2004